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Date: August 25, 2008 Name: Eric J. Baude
Signature: /EJB/

Attorney Docket No. 10546-109

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

MICHAEL J. BORRELI

Serial No. 10/764,316

Filing Date: January 23, 2004

For: METHODS AND COMPOSITIONS FOR
HEAT ACTIVATED GENE THERAPY
USING CYTOLETHAL DISTENDING
TOXIN

Examiner:
Chong, Kimberly

Group Art Unit No.
1635

Confirmation No.
8323

RENEWED PETITION UNDER 37 CFR 1.137(b)

Mail Stop PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In reply to the Petition Decision June 27, 2008 Applicant has filed a Renewed Petition Under 37 CFR § 1.137(b) (Petition to Revive an Unintentionally Abandoned Application). Applicant concurrently files this attachment to the Renewed Petition herewith.

REMARKS

Reconsideration of the Petition is respectfully requested. Applicant would like to thank the Examiner for the Petition Decision mailed June 27, 2008. The Petition Decision noted that:

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. *See MPEP 711.03(c)(II)(C) and (D).* The instant petition lacks item 1.

The application became abandoned for failure to timely file a proper reply within the meaning of 37 CFR 1.113 to the final Office action of June 13, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See MPEP 711.03(c)(III)(A)(2).*

Applicant submits that a proper reply has been presently filed within the meaning of 37 CFR § 1.113 to the Final Office Action of June 13, 2007, as a Request for Continued Examination has been filed concurrently along with a Response to the Final Office Action, and a proper petition under 37 CFR 1.137(b).

Conclusion

Applicant respectfully submits that all of the requirements for a grantable petition under 37 CFR § 1.137(b) have been submitted. Applicant respectfully requests that the petition be granted.

Respectfully submitted,

/EJB/
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